IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA DAVENPORT DIVISION

DEMETTRIS BYRD, :

Plaintiff, : CIVIL NO. 3-00-CV-20078

:

vs. : ORDER ON DEFENDANT'S

MOTION FOR SUMMARY

HANSALOY CORPORATION, : JUDGMENT

:

Defendant. :

This matter comes before the Court on Defendant's Motion for Summary Judgment, (Clerk's No. 44), filed October 31, 2001. The parties consented to proceed before a United States Magistrate Judge under 28 U.S.C. § 636(c).

Plaintiff, Demettris¹ Byrd, brought suit against Defendant, Hansaloy Corporation, claiming that Hansaloy unlawfully discriminated against him, created a hostile work environment based on his race, and retaliated against him, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII"), and the Iowa Civil Rights Act, Iowa Code chapter 216 (1997) ("ICRA"). Hansaloy moves for summary judgment on the basis that Byrd has not made a showing sufficient to establish the elements essential to his claims, and that no genuine issue exists as to any material fact and the company is entitled to judgment as a matter of law.

Byrd filed his Resistance on November 29, 2001. Defendant filed a Reply on December 10, 2001. A hearing was held on December 19, 2001. This matter is fully submitted.

I. STANDARD FOR SUMMARY JUDGMENT

A court shall grant a motion for summary judgment only if there is no genuine issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A court must consider the facts and the

¹ The record indicates that Byrd spells his first name, "Demettriss." *See*, *e.g.*, Pl.'s Ex. 3, Application for Employment. But the Complaint and other pleadings contain the spelling, "Demettris." *See* Amended Compl. The Court will use the spelling "Demettris."

inferences to be drawn from them in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

To preclude the entry of summary judgment, the nonmovant must make a showing sufficient to establish the existence of every element essential to his case, and on which he has the burden of proof at trial. *Celotex*, 477 U.S. at 322-23; *Reed v. ULS Corp.*, 178 F.3d 988, 989 (8th Cir. 1999). When a motion is made and supported as required in Federal Rule of Civil Procedure 56(a), the adverse party may not rest upon the mere allegations or denials in his pleadings, but must set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324. At the summary judgment stage, the court may not make determinations about the credibility of witnesses or the weight of the evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

Summary judgment is appropriate when the evidence, viewed in the light most favorable to the non-moving party, demonstrates that there are no outstanding issues of material fact and the moving party is entitled to judgment as a matter of law. *Habib v. NationsBank*, No. 01-2056, slip op. at 4 (8th Cir. Dec. 28, 2001); *Henerey v. City of St. Charles*, 200 F.3d 1128, 1131 (8th Cir. 1999); Fed. R. Civ. P. 56(c).

II. MATERIAL FACTS NOT IN DISPUTE

Unless otherwise indicated, the following facts are either undisputed or viewed in the light most favorable to Byrd, the non-moving party.

Byrd worked at Hansaloy from June 29, 1994, until he was fired on December 11, 1997. Hansaloy manufactures slicer blades for food processing, primarily for the wholesale baking industry.

In October 1995, Sid Stromboch, Byrd's supervisor, stated during a discussion of a movie that African-American youths live in ghettos among gangs and drugs because they want to. (Byrd Dep. at 54.) Byrd, an African American, found Stromboch's comment offensive, and Byrd responded that no person wants to live in the ghetto among gangs and drugs.

In January 1996, Stromboch took Byrd to the men's bathroom and pointed to an African-American woman employee, Charity Rush, talking inside the bathroom with a Hispanic male employee, Mike Gomez.

In July 1996, co-workers Dean Dusenberry and Tony Marrero made racial comments in Byrd's presence concerning the preferences of African-American women.

On July 11, 1996, Byrd and Rush were talking on a break. As the break ended, Byrd's new supervisor, Scott Kensigner, told the two he would not tolerate their wasting time by talking, even though Byrd explained he and Rush were on their allotted breaks.

Later in July 1996, Byrd reported to Steven Wright, Hansaloy's president, about Stromboch's October 1995 comment regarding African-American youths wanting to live in the ghetto, Stromboch's taking Byrd to the men's bathroom to show him that Rush and Gomez were talking in the bathroom, Dusenberry's and Marrero's comments concerning African-American women, and Kensigner's reprimand concerning breaks. Wright told Byrd that because of his high production output, he could take a break whenever he wanted, without setting restrictions concerning length. Wright investigated Byrd's other complaints by interviewing Byrd, Rush, Gomez, Dusenberry, Marrero, and Stromboch.

Hansaloy fired Stromboch on July 22, 1996. The same day, Steven Wright wrote a memorandum to Rush stating that Stromboch was fired for reasons stemming from harassment allegations she had made and because of other violations of company policies discovered during the investigation of her allegations. (Pl.'s Ex. 8.) The company sent employees a memorandum stating that Hansaloy fired Stromboch for sexually harassing an African-American woman, and that the company would not tolerate such conduct. Stromboch's wife died following her husband's discharge. Byrd was told that at Mrs. Stromboch's funeral, Tony Marrero said that Byrd was the one who got Stromboch fired. Byrd testified that various employees blamed Stromboch's firing on him and expressed their feelings in the way they treated Byrd. (Byrd Dep. at 70.)

Stromboch's close friend, Mike Jewell, a Hansaloy employee, began harassing Byrd by walking by him and mumbling, and ignoring Byrd when Byrd asked him to repeat what he had said. In July 1996, Byrd complained about Jewell's behavior to Joel Wright, a manager and Steven Wright's son. Joel Wright told Byrd he was paranoid, and that he did not appreciate Byrd telling on Jewell. Wright said he would not put it past Jewell to learn that Byrd had told on him. Wright did nothing at the

time to correct the situation.

Byrd told Don Berry, the production supervisor and Jewell's supervisor, about Jewell's behavior, which he believed was harassment. Berry said he would talk to Jewell. However, Jewell continued his harassing behavior toward Byrd.

On January 9, 1997, Jewell purposely bumped into Byrd at work. Byrd told Steven Wright about the bumping incident, and a co-worker confirmed Byrd's account. When Wright discussed the incident in his office with Jewell and Byrd, Jewell admitted bumping into Byrd, but claimed it was an accident. Wright took no action. Steven Wright told Byrd that perhaps the reason employees were treating him negatively was because at one point Hansaloy did not hire African Americans, and employees did not know how to respond. Hansaloy employed approximately four African Americans out of 65 employees from 1994 to 1997.

From January through August 1997, Jewell continued to harass Byrd daily with acts such as slamming doors and machine tops, mumbling unintelligibly in front of Byrd, giving Byrd certain looks, and rolling his eyes. Byrd did not complain to managers about Jewell's conduct during this period, because he had previously complained to managers, including Steven Wright, and they had done nothing to remedy the situation.

On January 24, 1997, Byrd wrote a letter to Steven Wright alleging that co-workers were sabotaging his work. (Pl.'s Ex. 8 at 7-9.)

On July 9, 1997, Byrd visited a therapist because of Jewell's harassment.

On July 14, 1997, Byrd, who had been working as a welder, began training for a new job as a grinder. While Byrd was in training, Berry supervised him. On July 24, 1997, Byrd began working as a grinder, and Don Rupe became his supervisor.

In early August 1997, Jewell began calling Byrd "nigger," both to his face and in remarks to coworkers, when he knew Byrd could overhear him. On August 29, Byrd complained to Berry about Jewell's calling him "nigger." Jeff Petterson, Byrd's co-worker, told Berry he had heard Jewell refer to Byrd as "nigger" when talking to co-workers. Berry reported the information to Steven Wright

On August 29, 1997, Steven Wright told Jewell that an employee had corroborated that Jewell

had called an African-American employee, whom Wright did not name, "nigger," and Wright warned Jewell he would be fired for a future repeat incident. Jewell assumed Wright was accusing him of calling Byrd "nigger," and he referred to Byrd as "sniveling" and whining. (Pl.'s Ex. 8 at 24.) Jewell told Wright that he would not make such comments again at work, but that such behavior outside of work should not make any difference.

On September 4, 1997, Jewell called Byrd a cry-baby and "nigger." (Byrd Dep. at 49.) That day, Byrd reported Jewell's conduct to his supervisor, Rupe.

Jewell continued to harass Byrd by miming the words cry-baby and "nigger." Byrd complained about Jewell's harassing conduct to Steven Wright and stated that Jewell's actions caused him stress. Wright asked if anyone had witnessed Jewell's actions, and Byrd said he knew of no witnesses. Wright talked with Jewell about Byrd's allegations, and told him the allegations were uncorroborated, so Wright was giving him another warning. Jewell became upset and told Wright that Byrd might "have to have time off to go to the hospital." (Pl.'s Ex. 8 at 27.)

From September 4 to October 24, 1997, Jewell continued to harass Byrd by calling him "nigger." Byrd did not complain to Hansaloy managers. His prior complaints had been futile, and Byrd believed that if he complained again, not only would nothing be done to remedy the situation, but the harassment would escalate.

On October 9, 1997, Steven Wright and Don Rupe expressed concern to Byrd about severe maintenance issues with his grinding machines and his low productivity as a grinder. Byrd responded that he was sure someone was tampering with his grinding machines. In a note to the file, Steven Wright stated that on October 12, 1997, thinking that Byrd's allegations of sabotage might have merit, he started an investigation of the alleged sabotage. (Pl.'s Ex. 8 at 28.) Besides Steven and Joel Wright, no one – not even Byrd – knew of the investigation. *Id.*²

Joel Wright believed that Byrd's slow adjustment to the grinder job was similar to the pace of

² The record is unclear concerning the end of the investigation. In his note, Steven Wright states that on January 14, 1997, "the subject of the investigation was terminated for an un-related incident. The investigation was stopped." (Pl.'s Ex. 8 at 28.) The date January 14, 1997, appears to be in error, however, because it falls before October 12, 1997, the date the investigation started.

his adjustment to the welder job; "It seemed to take him a very long time to get proficient on the welder job." (Pl.'s Ex. 8 at 36.) Once Byrd learned the welding job, however, the company was satisfied with his performance, as evidenced by Steven Wright's offer in October 1997 to let Byrd return to a welding job.

On October 22, 1997, Jewell allegedly called Byrd a "nigger" while in the janitor's room at work and stated, "complain all you want, ain't nothing going to happen to me." (Byrd Dep. at 48.)

On Friday, October 24, Byrd got a complaint form at the Davenport Civil Rights Commission. Later that day, Byrd and his 4-year-old daughter were in a video store, when Jewell walked by and called Byrd a "nigger." Jewell left the store and stood outside. After buying a video, Byrd walked outside and put his daughter inside his truck. Jewell yelled at Byrd, "Nigger, what the 'F' do you want to do?" (Am. Compl. (Third) at ¶ 40.) Jewell approached Byrd and physically attacked him, pushing him inside his truck. Byrd's daughter screamed and yelled. Jewell and Byrd fought a few minutes. Jewell left. When police arrived, Byrd told them what had happened. Byrd went to Hansaloy and, because Steven Wright was out of the office, he reported the incident to Kim Brenner, the company's vice president. Byrd said he wanted to speak to Steven Wright on Monday, October 27, 1997.

On October 25, 1997, Byrd filled out the civil rights complaint form he had obtained, alleging racial and retaliatory discrimination claims against Hansaloy. (Byrd Dep. at 120-21; Pl.'s Discovery Ex. 22.) He returned the form to the Davenport Civil Rights Commission the following week. (Byrd Dep. at 121-122.)

On October 27, Byrd went to his family physician because of the bruises he received during Jewell's assault. The doctor found that Byrd's blood pressure was extremely high, and he prescribed medication to treat Byrd's high blood pressure and stress. The same day, Byrd told Steven Wright about Jewell's attack on him at the video store. Later that day, Wright told Jewell he would be fired for any future harassment of Byrd, even if it occurred off of Hansaloy's property.

At about 2 p.m. on October 28, 1997, a police captain called Steven Wright to ask questions regarding Jewell's assault of Byrd. The officer expressed surprise that Jewell was still a Hansaloy employee. Wright believed the officer was giving "strong hints that a civil case would be made against

Hansaloy," and that "it wouldn't look good if Jewell were still working here." (Pl.'s Ex. 8 at 39.) Steven Wright fired Jewell at approximately 3:15 p.m. on October 28, 1997.

Later that day, Byrd entered a meeting between Joel Wright, Berry and Rupe to discuss his disappointment with the way the company had handled Jewell's actions towards him and other issues concerning the alleged discrimination and harassment to which he had been subjected at work. He said that Jewell's assault at the video store had upset his daughter and caused her nightmares. Byrd referred to the possibility of suing Hansaloy.

Following the meeting, Joel Wright told Steven Wright and Kim Brenner about Byrd's comments. Steven Wright noted that Joel was "in tears" after meeting with Byrd. (Pl.'s Ex. 8 at 42.) The Hansaloy managers "agreed to make it policy to not discuss these issues further" with Byrd, and to have their lawyer present at the next meeting with Byrd. (Pl.'s Ex. 8 at 37.) That evening, Steven wrote in a file note, "*Legal threats* to company for not firing Jewel – that's the cause of all [Byrd's] problems." *Id.* at 42 (emphasis in original).

Stating that his blood pressure was acting up, Byrd left work early, at 10 p.m., on October 28, 1997.

On October 29, 1997, two representatives of the National Association for the Advancement of Colored People (NAACP) came to Hansaloy to discuss with company representatives the discrimination against Byrd. (Pl.'s Ex. 8 at 41.) Hansaloy's supervisors said that with the firing of Jewell, the source of the harassment had been eliminated. The NAACP representatives said they were worried that Byrd might suffer retaliation for reporting the assault and getting Jewell fired. Hansaloy supervisors said Byrd could use the company's written procedures to report any retaliation if it occurred.

Joel Wright expressed concern that Byrd's accusations and legal threats during the previous night's meeting would lead to a confrontational atmosphere at work. The NAACP representatives asked Hansaloy's supervisors to empathize with Byrd because of the difficult situation in which he had been.

On October 29, 1997, Steven Wright gave Byrd a letter in which he "strongly encourage[d]"

the employee to follow the company's Equal Employment Opportunity and harassment complaint procedure for making any future discrimination complaints. (Pl.'s Ex. 8 at 46.) The letter did not explain what the procedure entailed. Wright stated he had been told that Byrd made "threats against the company and its supervisors and made personal attacks on supervisors" at the October 28 meeting. (Pl.'s Ex. 8 at 46.) Wright wrote that threats and personal attacks were unacceptable and irrelevant to any of Byrd's discrimination complaints, and, "Future threats or personal attacks will result in discipline, up to and including termination." *Id*.

Byrd told Steven Wright that he felt the letter was a registration of charges against him, and that he had not had a chance to tell his side of the story. (Pl.'s Ex. 21.) Wright's letter upset Byrd, and he gave a copy to Jethroe Cribbs, a NAACP representative.

On October 30, 1997, Cribbs called Wright, who "explained that this letter was to be a clarification of our procedures." (Pl.'s Ex. 21.) Wright also told Cribbs he was working to set up a mediation session with Byrd.

Byrd took a week-long medical leave of absence due to his high blood pressure.

On November 6, 1997, a mediator met with Byrd and Hansaloy representatives.

On November 7, 1997, Byrd called Steven Wright and asked if the company would pay for further counseling sessions for him and his daughter, beyond the three free sessions they had already received through the employee assistance program. Byrd said his daughter was having trouble sleeping. During the telephone conversation, Byrd attempted to discuss the mediation session. Wright responded, "we need to go forward from here . . . we can't spend hours per day on this." (Pl.'s Ex. 8 at 56.) Wright told Byrd that if he had any complaints, to make the company aware of them specifically, and the company would tell him of any action taken.

On Monday, November 24, 1997, Byrd and Dean Dusenberry began to argue at work. Their supervisor, Rupe, called the two into his office. Dusenberry called Byrd a "bad name." (Pl.'s Ex. 8 at 69.) Byrd said that after the meeting, Dusenberry threatened Byrd, saying, "I'm gonna get you," but Dusenberry told Steven Wright that he made no such threat. *Id.* at 69-70. The argument with Dusenberry caused Byrd so much stress that he had to go home and take medicine for the stress.

Because the medicine's directions said not to operate heavy machinery when taking the medicine, Byrd asked for leave on November 25, 1997. Steven Wright asked Byrd, "to get [a] Dr. to say he couldn't work." *Id.* at 69.

In a meeting with Byrd and Rupe on December 2, 1997, Steven Wright clarified what kind of medical excuse Byrd needed to receive pay for the two-day Thanksgiving holiday after being off work the day before the holiday. Byrd told Wright the medication precluded working on heavy machinery because of drowsiness, and that the decision of when he needed to take the medicine was discretionary. Wright said the company needed that information in writing from Byrd's doctor. (Pl.'s Ex. 8 at 81.)

On December 4, 1997, Byrd's physician wrote the following:

Mr. Byrd has been given Xanax for stress and anxiety disorder that he has developed over the past few months. He needs to take it only in case of severe anxiety or nervousness. He should not take it at the time of operating any machinery since it may cause sedation. If you have any questions please feel free to contact me.

Pl.'s Ex. 23.

Byrd brought his physician's written statement to work on December 4, 1997, and showed it to Rupe. (Pl.'s Ex. 8 at 84.) Rupe wrote a memorandum stating that Byrd would receive no holiday pay, because Byrd "elected not to give me a copy," of the physician's statement.

At approximately 4 p.m. on December 10, 1997, Byrd asked to be allowed to go home because he felt ill. *Id.* at 86. Rupe relayed Byrd's request to Joel Wright, who discussed the matter with Steven Wright. The decision was made to let Byrd go home, but he would need a physician's excuse to return to work. Byrd tried to contact his physician to get a written excuse, but could not reach him. Byrd returned to work until approximately 10:45 p.m., when he asked to go home because of a severe headache. Byrd received permission to leave.

On December 11, 1997, Steven Wright read to Byrd a written statement in which he stated the reasons for firing him. The statement read in part as follows:

We feel that it is in the best interest of Hansaloy and since you seem unhappy here as well that we release you from further responsibility from the company. From Hansaloy's standpoint, this is being done because of the continual workplace

interruptions that you are at the center of. . . . We will not contest your un-employment. Pl.'s Ex. 8 at 95.

III. ANALYSIS

A. Disparate Treatment

To establish a prima facie case of disparate-treatment discrimination based on circumstantial, rather than direct evidence, as Byrd seeks to do here, the plaintiff must show³ (1) he is a member of a protected class; (2) he was qualified for his position and performed his duties adequately; and (3) he suffered an adverse employment action under circumstances that would permit the court to infer that unlawful discrimination had been at work. *Habib v. NationsBank*, No. 01-2056, slip op. at 4 (8th Cir. Dec. 28, 2001); *Whitley v. Peer Review Sys., Inc.*, 221 F.3d 1053, 1055 (8th Cir. 2000) (citing *inter alia McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). Once the plaintiff has established his prima facie case, the employer must offer legitimate reasons for the adverse action. *Habib*, No. 01-2056, slip op. at 4 (citing *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 506-07 (1993)). The plaintiff may still succeed, however, if he can show that the reasons offered by his employer were mere pretexts for discrimination. *Id.* (citing *Chock v. Northwest Airlines, Inc.*, 113 F.3d 861, 865 (8th Cir. 1997)).

Hansaloy seeks summary judgment on the basis that Byrd was unqualified to perform his job, the company treated Byrd no differently than similarly situated employees, and Hansaloy's stated reasons for terminating Byrd were not pretextual.

Summary judgment is denied on Byrd's disparate-treatment claim. The Court holds that Byrd has pointed to sufficient evidence to generate fact questions that preclude entry of summary judgment against him. The fact questions include, but are not limited to, whether he was qualified to perform his job, whether he suffered an adverse employment action under circumstances that would permit an inference that unlawful discrimination had been at work, and whether Hansaloy's stated reasons for

³ The allocation of the burden of proof under the ICRA is the same as that used to evaluate Title VII claims. *See Hulme v. Barrett*, 449 N.W.2d 629, 631-33 (Iowa 1989); *King v. Iowa Civil Rights Comm'n*, 334 N.W. 2d 598, 601 (Iowa 1983). Therefore, the following discussion of the scheme of proof applies equally to Byrd's Title VII and ICRA claims.

firing Byrd were pretexts for unlawful discrimination.

B. Hostile Work Environment

To prevail on his hostile work environment claim, Byrd must show (1) he is a member of a protected group; (2) unwelcome harassment occurred; (3) a causal nexus existed between the harassment and his protected-group status; (4) the harassment affected a term, condition, or privilege of employment; and (5) his employer knew or should have known of the harassment and failed to take prompt and effective remedial action. *Austin v. Minnesota Min. and Mfg. Co.*, 193 F.3d 992, 994 (8th Cir. 1999); *see Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) ("Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment – an environment that a reasonable person would find hostile or abusive – is beyond Title VII's purview.")

Hansaloy contends Byrd has failed to establish discriminatory conduct sufficient to support his hostile-work-environment claim, the alleged conduct is not causally related to Byrd's race, and the company took prompt and immediate action when it learned of the alleged discriminatory conduct.

Summary judgment is denied on Byrd's hostile-work-environment claim. The Court holds that Byrd has pointed to sufficient evidence to generate fact questions that preclude entry of summary judgment against him. The fact questions include, but are not limited to, whether the alleged conduct was causally related to Byrd's race, and whether the company took prompt and immediate action when it learned of the alleged discriminatory conduct.

C. Retaliation

Byrd asserts he was subjected to retaliation for complaining about harassment based on his race, and that the retaliation resulted in various adverse employment actions against Byrd, including Hansaloy's firing of Byrd on December 11, 1997.

Hansaloy argues it is entitled to summary judgment on Byrd's retaliation claim, because Byrd was not engaged in a protected activity, his discharge was not causally linked to any protected activity, and the company had legitimate nonretaliatory reasons for firing Byrd.

To establish a prima facie case of Title VII retaliation, Byrd must show that he engaged in protected activity, he was subjected to an adverse employment action, and that a causal connection

existed between the protected activity and the adverse employment action. *Curd v. Hank's Discount Fine Furniture, Inc.*, 272 F.3d 1039, 1041 (8th Cir. 2001) (holding plaintiff did not meet causation requirement based on time lapse between alleged protected activity and her discharge, and lack of other evidence linking the two). In terms of a causal connection, a court should evaluate the timing of discharge in light of other evidence or lack of evidence. *Curd*, 272 F.3d at 1041 (citing *Sherman v. Runyon*, 235 F.3d 406, 410 (8th Cir. 2000)).

To provide the basis for a sexual harassment retaliation claim, a complaint concerning unlawful discrimination "must have been about conduct that a reasonable person could have found violated Title VII, that is, conduct that could reasonably be found to be so severe or pervasive as to alter a term or condition of employment." *Curd*, 272 F.3d at 1041 (citing *Clark County Sch. Dist. v. Breeden*, 121 S. Ct. 1508, 1509-10 (2001) (per curiam)).

Iowa law calls for applying the same elements under a standard similar to the Title VII standard. *See Barrera v. Con Agra, Inc.*, 244 F.3d 663, 665-66 (8th Cir. 2001) (determining grant of summary judgment was proper; under Iowa state law the "causation standard in a common-law retaliatory discharge case is high," and the "employee's engagement in protected conduct must be the *determinative* factor in the employer's decision to take adverse action against the employee.") (quoting *Teachout v. Forest City Comm. Sch. Dist.*, 584 N.W.2d 296, 299 (Iowa 1998)) (emphasis in quoted source)).

Summary judgment is denied on Byrd's retaliation claim. The Court holds that Byrd has pointed to sufficient evidence to generate fact questions that preclude entry of summary judgment against him. The fact questions include, but are not limited to, whether Byrd was engaged in a protected activity, whether his discharge was causally linked to any protected activity, and whether Hansaloy had legitimate nonretaliatory reasons for firing Byrd.

IV. CONCLUSION

Defendant Hansaloy's Motion for Summary Judgment (Clerk's No. 44) is **denied** as to all of Plaintiff Byrd's claims, because genuine issues of material fact remain to be determined at trial.

Trial remains set for January 28, 2002, and Final Pretrial Conference at 9:00 a.m. on January

23, 2002, by telephone conference call placed by Defendant.

IT IS SO ORDERED.

Dated this 8th day of January, 2002.

CELESTE F. BREMER

UNITED STATES MAGISTRATE JUDGE

Cute Bremer